ABSTRAK

ANALISIS YURIDIS WANPRESTASI DALAM AKAD MUDHARABAH MENURUT KOMPILASI HUKUM EKONOMI SYARIAH

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Pelaksanaan akad mudharabah pada kegiatan usaha menjadi fondasi penting dalam transaksi keuangan syariah karena menekankan prinsip keadilan, transparansi, dan kepercayaan antara pemilik modal (*Shahibul maal*) dan pengelola usaha (*Mudharib*). Namun, dalam praktiknya, pelaksanaan akad mudharabah tidak selalu berjalan mulus. Sering kali terjadi wanprestasi, terutama ketika *Mudharib* tidak memenuhi kewajibannya sesuai akad, yang berpotensi menimbulkan kerugian dan sengketa hukum. Berdasarkan hal tersebut terdapat permasalahan, yaitu apa penyebab wanprestasi dalam akad mudharabah, bagaimana penyelesaian sengketa yang timbul akibat wanprestasi tersebut serta akibat hukumnya menurut Kompilasi Hukum Ekonomi Syariah (KHES).

Jenis penelitian yang digunakan Penulis dalam penelitian ini adalah jenis penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual, serta mengkaji sumber data sekunder berupa peraturan perundang-undangan, literatur hukum, dan putusan pengadilan terkait. Data dianalisis secara kualitatif dengan teknik deskriptif-analitis.

Hasil penelitian dan pembahasan menunjukkan bahwa akad mudharabah menurut KHES mensyaratkan kejelasan modal, bidang usaha, dan pembagian keuntungan yang adil serta transparan. wanprestasi dalam akad mudharabah terjadi apabila salah satu pihak, khususnya *Mudharib*, tidak memenuhi kewajibannya seperti tidak mengelola usaha sesuai kesepakatan, menggunakan dana tidak semestinya, atau tidak membagikan keuntungan sesuai *nisbah*. Akibat yang ditimbulkan dari wanprestasi diatur dalam Pasal 38 KHES dengan sanksi utama berupa pembayaran ganti rugi. Penyelesaian sengketa akibat wanprestasi dapat dilakukan melalui musyawarah, mediasi, atau jalur litigasi di pengadilan agama dengan berpedoman pada KHES.

Kata Kunci: Wanprestasi, Akad Mudharabah, Kompilasi Hukum Ekonomi Syariah

ABSTRACT

JURIDICAL ANALYSIS OF DEFAULT IN MUDHARABAH CONTRACTS ACCORDING TO THE COMPILATION OF SHARIA ECONOMIC LAW

By

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The implementation of mudharabah contracts in business activities is an important foundation in Islamic financial transactions because it emphasises the principles of fairness, transparency and trust between the owner of capital (Shahibul maal) and the business manager (Mudharib). However, in practice, the implementation of mudharabah contracts does not always run smoothly. Defaults often occur, especially when Mudharib does not fulfil his obligations according to the contract, which has the potential to cause losses and legal disputes. Based on this, there are problems, namely how the causes of default in mudharabah contracts and their legal consequences and how to resolve disputes arising from these defaults according to the Compilation of Sharia Economic Law (KHES).

The type of research used by the author in this research is normative legal research with a statutory approach and conceptual approach, and examines secondary data sources in the form of laws and regulations, legal literature, and related court decisions. The data is analysed qualitatively with descriptive-analytical techniques.

The results of the research and discussion show that mudharabah contracts according to KHES require clarity of capital, business fields, and fair and transparent profit sharing. default in mudharabah contracts occurs if one party, especially Mudharib, does not fulfil its obligations such as not managing the business according to the agreement, using funds improperly, or not sharing profits according to the ratio. The consequences of default are regulated in Article 38 KHES with the main sanction being the payment of compensation. Dispute resolution due to default can be done through deliberation, mediation, or litigation in the religious court based on KHES.

Keywords: Default, Mudharabah Agreement, Sharia Economic Law Compilation